

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 14L-34
DATES REFERRED: August 9, 2016¹
DATES OF NOTIFICATION: September 22, 2016
DATE OF LAST RESPONSE: November 16, 2016
DATE ACTIVATED: December 20, 2016
EPS:
ELECTION CYCLE: 2012
EXPIRATION OF SOL: August 25, 2017-
November 2, 2017

RAD REFERRAL: 16L-18
DATE REFERRED: October 27, 2016
DATE OF NOTIFICATION: October 31, 2016
DATE OF LAST RESPONSE: December 19, 2016
DATE ACTIVATED: December 20, 2016
EPS:
ELECTION CYCLE: 2014
EXPIRATION OF SOL: August 7, 2019-
October 30, 2019

SOURCE: Internally Generated

RESPONDENTS: Workers' Voice and Elizabeth Shuler
in her official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30104(a)(1)
52 U.S.C. § 30104(b)(4)(H)(iii)
52 U.S.C. § 30104(g)(1)
11 C.F.R. § 104.3(a)(2)
11 C.F.R. § 104.3(b)(1)(vii)
11 C.F.R. § 104.4(b)(2), (c)
11 C.F.R. § 104.13(a), (b)
11 C.F.R. § 111.43

INTERNAL REPORTS CHECKED: Disclosure Reports
Reports Analysis Division Referral Materials

FEDERAL AGENCIES CHECKED: None

¹ This referral regarding the 2012 election cycle was originally sent to the Office of General Counsel in 2014 but was sent back to the Reports Analysis Division for further review and clarification.

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Workers' Voice ("WV" or "the Committee") to the Office of General Counsel ("OGC") for failing to timely file 24- and 48-hour Reports of Independent Expenditures ("IEs") totaling \$527,990.11 made shortly before the 2012 election and \$182,561.70 made shortly before the 2014 election.² A large portion of these referred IEs were made in connection with door-to-door canvassing (and, to a lesser extent, telephone banking) activities organized by the Committee but carried out by individuals who were employed by and paid by other organizations for the time they spent working for the Committee.³ The paid time and associated expenses of employed individuals were provided to, and reported by, WV as in-kind contributions from numerous federal political committees, non-federal political organizations and labor unions.⁴ A smaller portion of the referred IEs were made with WV's own disbursements (*i.e.*, they were not in-kind contributions).

WV acknowledged that it did not file 24- and 48-hour reports for the in-kind contributions made to further IEs, but argued that 24- and 48-hour disclosure reports are not required for those IEs.⁵ With regard to the remaining missing 24- and 48-hour reports identified in the referrals, WV argued that they constitute a small percentage of its total IE activity during the 2012 and 2014 election cycles and that the missing reports were attributable to a lack of

² Amended RAD Referral (RR 14L-34), Workers' Voice (August 9, 2016) ("Amended 14L-34 Referral"); RAD Referral (RR 16L-18), Workers' Voice (Oct. 27, 2016) ("16L-18 Referral").

³ See Workers' Voice, Original Response at 2-3 (Jan. 15, 2015) ("14L-34 Orig. Resp."); Workers' Voice, Resp. at 2 (Dec. 19, 2016) ("16L-18 Resp.>").

⁴ 14L-34 Orig. Resp. at 2-3; 16L-18 Resp. at 2-4.

⁵ 14L-34 Orig. Resp. at 3-4; 16L-18 Resp. at 3-4. WV asserts that it filed 24- and 48-hour reports for \$24,247.50 of the IEs that it made through its own disbursements.

1 timely data from vendors and in-kind contributors.⁶ The available information appears to
2 support WV's assertion that \$22,987.50 of the monetary IEs referred in 14L-34 were timely
3 reported.⁷ However, WV's arguments that it was not responsible for late filed reports
4 attributable to its lack of timely data, and that IEs made with in-kind resources did not require
5 24- and 48-hour disclosure reports are unsupported by the Act, Commission regulations, and
6 precedent.

7 As set forth below, we recommend that the Commission open a Matter Under Review
8 ("MUR") and merge the two referrals into the MUR; find reason to believe that WV and
9 Elizabeth Shuler in her official capacity as treasurer violated 52 U.S.C. § 30104(g)(1) and
10 11 C.F.R. § 104.4(b) and (c) by failing to timely file IE reports; authorize pre-probable cause
11 conciliation; and approve a conciliation agreement.

12 **II. FACTUAL BACKGROUND**

13 Worker's Voice is a federal non-connected independent expenditure-only political
14 committee controlled and administered by the AFL-CIO national labor federation.⁸ During the
15 2012 and 2014 election cycles, WV made millions of dollars of IEs. This Report addresses two
16 separate RAD referrals relating to WV's reporting of its IEs in 2012 and 2014. The largest
17 portion of the IEs referred (\$427,957.69 in 2012 and \$18,008.50 in 2014) were in-kind
18 contributions made in connection with a door-to-door canvassing project organized by WV, but
19 carried out by individuals whose time was paid for by their own employers.⁹ A smaller portion

⁶ 14L-34 Orig. Resp. at 2-3.; 16L-18 Resp. at 5.

⁷ As discussed below, the available information does not appear to support WV's assertion that the remaining \$1,260 of allegedly timely monetary IEs (those referred in 16L-18) were timely reported.

⁸ 14L-34 Orig. Resp. at 2.

⁹ *Id.* at 1.

1 of the IEs referred (\$100,032.42 in 2012 and \$164,553.20 in 2014) were made through WV's
2 own disbursements.¹⁰

3 For those IEs made utilizing the donated labor, WV properly reported the in-kind receipts
4 and disbursements on Schedules A and E, respectively, of its regularly scheduled disclosure
5 reports (e.g., quarterly, pre-general, and post general reports) for the 2012 and 2014 election
6 cycles. Similarly, for its own IE disbursements, WV properly reported them on the Schedule E
7 of its regularly scheduled disclosure reports. However, for both its own IE disbursements and in-
8 kind IEs, WV did not file all of the required 24- and 48-hour reports associated with the IEs it
9 reported on Schedule E of its regularly scheduled reports. The missing 24- and 48-hour reports
10 are the subject of the referrals.

11 **A. RR 14L-34**

12 RAD Referral 14L-34 noted the failure of WV to file 24- and 48-hour reports totaling
13 \$527,990.11 for 1,922 IEs as disclosed on its Amended October 2012 Quarterly, 2012 Pre-
14 General, and 2012 Post-General Reports.¹¹ A summary of those reports covered by the referral
15 is set forth below.¹²

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¹⁰ *Id.* at 3, 16L-18 Resp. at 5.

¹¹ A referral to OGC is made if the schedules attached to any report omit of activity, such as the 48-hour reports supporting the independent expenditures WV disclosed in its 2012 October Quarterly and Pre-General reports. *See 2011-2012 RAD Review and Referral Procedures for Unauthorized Committees (Standard 7)*. The Amended 14L-34 Referral also included an Alternative Dispute Resolution Office (ADRO) referable matter for the 2012 Post-General Report. We recommend that the Commission consider the ADRO-referable matter in conjunction with the OGC-referable matter.

¹² A detailed chart of the untimely filed 24- and 48-hour reports can be found in the referral. All of the missing 24- and 48-hour reports for the referral are in support of or opposition to federal candidates.

Report	Number of Missing 24/48 hour reports	Number of IEs	Amount in Violation
2012 October Quarterly	14	457	\$92,044.23
2012 12 Day Pre-General	94	1,444	\$400,555.82
2012 30 Day Post General	10	21	\$35,390.06
Total	118	1,922	\$527,990.11

1
2 WV, in its initial response, acknowledged that it failed to file timely 24- and 48-hour
3 reports for (\$427,957.69) of in-kind IEs identified in this referral but offered an explanation for
4 its late filings and requested that the matter be handled by ADRO.¹³ According to WV, it made a
5 concerted effort to timely file its 48-hour reports during the 2012 general election period until it
6 realized that the untimely receipt of information from the in-kind contributors necessitated the
7 filing of numerous of amended 48-hour reports.¹⁴ At that point, WV appears to have made a
8 conscious decision to not continue to file amended 48-hour reports during the 2012 election
9 cycle once it deemed the process to be "overwhelming and inefficient" due to its delayed receipt
10 of the necessary information from contributors.¹⁵

11 WV also asserted that there is no clear legal guidance for reporting IEs made with in-kind
12 contributions.¹⁶ WV noted that Commission regulations require that an in-kind contribution
13 received also "shall be reported as an expenditure" on the appropriate schedule but asserted that
14 the Commission's public guidance has interpreted this to require that disbursements for in-kind

¹³ 14L-34 Orig. Resp. at 1. WV asserted that because of the complexity of its multi-state voter contact program, accurate information sometimes was received too late to file timely 24-hour or 48-hour reports. *Id.*

¹⁴ *Id.* at 4

¹⁵ *Id.*

¹⁶ *Id.* at 4-5; *see also* Suppl. Resp. at 2-4. WV asserted that there is no provision of the Act that directly addresses reporting obligations for in-kind contributions used to make IEs and little in the Commission's regulations and other sources of information about the ways to account for and report in-kind contributions used to make independent expenditures. Suppl. Resp. at 4.

1 contributions be reported as operating expenditures on Schedule B, not Schedule E, of a
2 committee's regularly scheduled reports.¹⁷ Accordingly, WV maintained that the Commission
3 cannot pursue an enforcement action against WV for not reporting the in-kind contributions used
4 for independent expenditures on Schedule E 24- and 48-hour reports.¹⁸ WV argued that despite
5 the fact that it did not actually rely upon the "Commission's interpretive rule" by filing its in-
6 kind IE expenditures on Schedule B, the Commission "cannot enforce compliance with a
7 reporting standard that did not then – and still doesn't – exist."¹⁹

8 With regard to the \$100,032.42 of referred IEs that were direct disbursements by WV (as
9 opposed to in-kind contributions), WV acknowledged that it untimely reported \$77,044.92, but
10 attributed the late filing to various types of vendor error.²⁰ WV maintained, however, that it
11 timely reported the remaining amount (\$22,987.50) which related to door hangers and telephone
12 calls made by two of its vendors, Mission Control and NGP VAN.²¹ WV stated that a
13 typographical error mistakenly listed the date of the Mission Control disbursement as October
14 11, 2012, rather than October 15, 2012, which made the report appear late.²² WV stated that a
15 similar error listed the NGP VAN calls as occurring on October 3, 2012, rather than October 11,
16 2012.²³

¹⁷ Suppl. Resp. at 6 (citing 11 C.F.R. § 104.13(a)(2)); *see also Campaign Guide for Nonconnected Committees* ("Campaign Guide") at 58.

¹⁸ Suppl. Resp. at 4.

¹⁹ 14L-34 Orig. Resp. at 5.

²⁰ *Id.* at 7-9.

²¹ *Id.* at 7.

²² *Id.*

²³ *Id.* at 8.

B. RR 16L-18

The 16L-18 Referral noted the failure of WV to timely file 24- and 48-hour reports totaling \$182,561.70 for 192 IEs as disclosed on its Amended 2014 30 Day Post-General and 2014 October Quarterly Reports.²⁴ A summary of those reports covered by the referral is set forth below.²⁵

Report	Number of missing 24- and 48 hour reports	Number of IEs	Amount in Violation
2014 October Quarterly	4	159	\$27,106.62
2014 30 Day Post-General	19	33	\$155,455.08
Totals	23	192	\$182,561.70

With regard to \$18,008.50 of in-kind IEs identified in this referral, WV made the same arguments that it did in 14L-34, namely that it was not required to file 24- and 48-hour reports for in-kind expenditures because Commission guidance suggested reporting the in-kind disbursements as operating expenditures on Schedule B rather than independent expenditures.²⁶

With regard to the \$164,533.20 of referred IEs that were direct disbursements, WV acknowledged that \$163,273.20 of IEs made through its own disbursement were reported late.²⁷ But, WV asserted that \$1,260 of IEs relating to a vendor named Mosaic were timely reported.²⁸ According to WV, of the \$1,260 in payments to Mosaic, one \$270 payment inadvertently listed

²⁴ The referral concerning the 2014 Post-General was made to OGC pursuant to Standard 7. *See 2013-2014 RAD Review and Referral Procedures for Unauthorized Committees (Standard 7)*. We recommend that the Commission consider the 2014 October Quarterly ADRO-referable matter in conjunction with the OGC-referable matter.

²⁵ A detailed chart of the untimely filed 24- and 48-hour reports can be found in the RR 16L-18. All of the missing 24- and 48-hour reports for the referral are in support of or opposition to federal candidates.

²⁶ *See* 16L-18 Resp. at 1.

²⁷ *Id.* at 5.

²⁸ *Id.*

1 the dissemination date of October 19, 2014, rather than October 16, 2014, for fliers in support of
2 Joe Garcia.²⁹ Since the \$270 payment was reported on October 17, 2014, WV asserted that it
3 was timely reported.³⁰ As to the remaining \$990 of the \$1,260 in Mosaic payments, WV
4 contended that due to a vendor system flaw, the Schedule E dates for "Date of Public
5 Distribution/Dissemination" and "Date of Disbursement or Obligation" were reversed, resulting
6 in an entry that appeared to be late but was not late.³¹

7 III. ANALYSIS

8 The Act requires committee treasurers to file reports of receipts and disbursements in
9 accordance with the provisions of 52 U.S.C. § 30104(b).³² This requirement includes reporting
10 contributions received and independent expenditures made by political committees other than
11 authorized committees.³³ Further, political committees that make or contract to make
12 independent expenditures at any time during a calendar year – up to and including the 20th day
13 before an election – must disclose the activity within 48 hours each time that the expenditure
14 aggregates \$10,000 or more.³⁴ Political committees that make independent expenditures
15 aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24
16 hours, before the date of that election, must disclose them within 24 hours following the date of
17 dissemination.³⁵ In addition, political committees must file additional reports within 24 hours

29 *Id.*

30 *Id.*

31 *Id.*

32 52 U.S.C. § 30104(a)(1).

33 52 U.S.C. §§ 30104(b)(2)(A), (4)(H)(iii); 11 C.F.R. §§ 104.3(a)(2)(i), (b)(1)(vii), 104.4(a).

34 52 U.S.C. § 30104(g); 11 C.F.R. § 104.4(b).

35 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

1 after each time they make or contract to make independent expenditures aggregating an
2 additional \$1,000.³⁶

3 Thus, WV had more than one reporting obligation with respect to disbursements
4 (including those corresponding to in-kind contributions used) to make independent expenditures:
5 regularly scheduled reporting and timely 24- and 48-hour IE reporting. WV appears to have
6 fulfilled the first of these obligations, including when it reported the receipt of relevant in-kind
7 contributions used in making IEs on Schedule A and corresponding disbursements on Schedule
8 E of its 2012 and 2014 regularly scheduled reports.³⁷ WV did not, however, meet its second
9 reporting obligation: timely 24- and 48-hour IE reporting.

10 Although WV contended that it failed to file the necessary 24- and 48-hour reports
11 because vendors and in-kind contributors failed to provide timely data.³⁸ The Commission has
12 not considered vendor error to be a valid exculpatory or mitigating factor in similar situations.³⁹

13 Furthermore, WV's argument that the Commission's reporting guidance excuses it from
14 filing 24- and 48-hour reports is unpersuasive. The Campaign Guide guidance cited by WV,
15 which states that offsetting disbursements for in-kind contributions must be reported as operating
16 expenditures on Schedule B, addresses only a committee's regularly scheduled reporting

³⁶ 11 C.F.R. § 104.4(c).

³⁷ See 11 C.F.R. § 104.13 (providing that in-kind contributions received also shall be reported as expenditures on the appropriate schedule).

³⁸ See, e.g., 14L-34 Responses; 16L-18 Resp. at 3.

³⁹ MUR 6568 (Heath Shuler for Congress) (finding that Committee failed to report disbursements caused by vendor's error) and MUR 6300 (Republican Party of Virginia) (finding RPV responsible for its vendor's failure to timely forward contributions and RPV's consequential reporting errors). The Commission has, however, taken vendor error into account as a mitigating factor in other types of cases, such as cases involving disclaimer violations. See, e.g., MUR 6125 (McClintock for Congress) (robocall disclaimer violation dismissed due to possible vendor error, among other factors).

1 obligations for certain in-kind contributions, not its 24- and 48-hour IE reporting obligations.⁴⁰
2 Assuming, *arguendo*, that WV is correct that the Commission has instructed committees to
3 report all offsetting disbursements for in-kind receipts used in making IEs on Schedule B instead
4 of Schedule E on their regularly scheduled reports, WV fails to explain why such regularly
5 scheduled reporting guidance should or does excuse WV from its separate 24- and 48-hour
6 reporting obligations. As discussed above, the statute and regulations impose two reporting
7 obligations on committees making IEs: on 24- and 48-reports and, later, on regularly scheduled
8 reports. On the issue of 24- and 48-hour reports, the Campaign Guide, the Act, and Commission
9 regulations are clear: committees making IEs over the specified aggregated amounts must file
10 the appropriate 24- and 48-hour reports.⁴¹

11 Moreover, even for purposes of regularly scheduled reporting, the Campaign Guide's
12 guidance that ordinary (*i.e.*, non-IE) offsetting disbursements corresponding to in-kind
13 contributions be reported as operating expenditures does not change the regularly scheduled
14 reporting obligations for in-kind contributions used to make IEs, which the Campaign Guide
15 does not address.⁴² Indeed, the campaign guide states that it provides guidance on "certain
16 aspects" of the law and is "not intended to replace the law or to change its meaning."⁴³ For the
17 "certain aspect" of the law not addressed in the Campaign Guide, *i.e.*, the reporting of in-kind

⁴⁰ See Campaign Guide at 58.

⁴¹ See Campaign Guide at 72-73; *see also* 52 U.S.C. §§ 30104(g), (g)(1); 11 C.F.R. §§ 104.4(b), (c). There is nothing in the Act, regulations, or campaign guides that would suggest that reporting a certain category of activity on one disclosure form automatically excuses reporting it on another disclosure form. To the contrary, the Campaign Guide states that IEs itemized on Schedule E that are disseminated prior to payment must also be disclosed on Schedule D as a reportable debt. *See* Campaign Guide at 72. It further provides that IEs that exceed an aggregated amount of \$10,000 must be reported on Schedule E and reported on a 48-hour Report. *Id.*

⁴² See Campaign Guide at 72 (describing Schedule E reporting of IEs, without mentioning the use of in-kind resources).

⁴³ *Id.* at i.

resources used to make IEs, WV's regularly scheduled reports do not evidence its alleged confusion; on its regularly scheduled reports, WV reported the offsetting disbursements for the in-kind receipts of labor used to make the referred IEs on Schedule E, not Schedule B.⁴⁴

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Lastly, we address WV's arguments on the timeliness of its reporting for IEs made through its own disbursements as it pertains to the following vendors: Mission Control (2012 activity); NGP Van (2012 activity); and Mosaic (2014 activity).⁴⁵ We have considered WV's assertions regarding the 2012 Mission Control and 2012 NPG Van IEs and reviewed the relevant disclosure reports. The disclosure reports confirm WV's assertion about the typographical errors. We are satisfied that these were clerical errors and that the Mission Control and NPG Van IEs were timely filed.⁴⁶ As for the \$1,260 of the Mosaic invoices that WV asserted were timely reported, we have reviewed the Committee's filings and have not been able to locate the specific \$270 Mosaic IE filing that WV claimed was filed on October 17, 2014. In addition, we are unable to locate the Mosaic IEs totaling \$990 which WV claimed were timely reported due to

⁴⁴ See 14L-34 Orig. Resp. at 5 (acknowledging that WV did not report any of the referred in-kind disbursement offsets on Schedule B of its reports, but rather reported them on Schedule E of its regularly scheduled reports).

⁴⁵ 14L-34 Orig. Resp. at 7-9; 16L-18 Resp. at 5. As to the remaining 2012 and 2014 monetary IEs, WV acknowledged the untimely reporting but provided various explanations for the failure to timely file the IE reports, none of which are sufficient under the Act or Commission regulations to vitiate the reporting violations. See 14L-34 Orig. Resp. at 7-9; 16L-18 Resp. at 5-6. We conferred with RAD regarding the Committee's explanations for the untimely reporting, and they indicated that they would not accept these explanations as sufficient to consider the IEs timely filed. We therefore conclude that WV has failed to meet its reporting obligations with respect to these IEs and is in violation of the Act and Commission regulations.

⁴⁶ We have conferred with RAD regarding these IEs and they concur with our conclusion that the Committee timely reported the IEs as long as the Committee provides clarification of the typographical error on the public record.

insufficient information provided by WV in its response.⁴⁷ Therefore, we conclude that the \$1,260 in Mosaic IEs were not timely filed.

Thus, WV did not comply with the Act's reporting requirements when it failed to file 141 24- and 48-hour reports totaling \$687,564.31 of IEs.⁴⁸ We, therefore, recommend that the Commission find reason to believe that WV and its treasurer violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(b) and (c).

⁴⁷ See 2014 Post-General Report. We conferred with RAD and they, too, were unable to locate the alleged Mosaic IE filings based on the information provided by the Committee in its response. Based on the available information, RAD has stated that it would not consider these IEs as timely reported.

⁴⁸ This figure reflects that we subtracted \$22,987.50 from the 14L-34 amount in violation, based on our conclusion that the Mission Control (\$15,487.50) and NGP Van (\$7,500) IEs were timely filed.

RRs 14L-34 & 16L-18 (Workers' Voice)
First General Counsel's Report
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IV. RECOMMENDATIONS

1. Open a MUR and merge RR 14L-34 and RR 16L-18 into the new matter.
2. Find reason to believe that Workers' Voice and Elizabeth Shuler in her official capacity as treasurer violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(b) and (c).
3. Authorize conciliation with Workers' Voice and Elizabeth Shuler in her official capacity as treasurer prior to a finding of probable cause to believe.
4. Approve the attached Factual and Legal Analysis.
5. Approve the attached Conciliation Agreement.
6. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

09/27/2017
Date

Kathleen Guith/ms
Kathleen M. Guith
Associate General Counsel
for Enforcement

1. Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 MUR

6
7 RESPONDENTS:

Workers' Voice and
Elizabeth Shuler, in her official
capacity as treasurer

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11 **I. INTRODUCTION**

12 This matter was generated based on information ascertained by the Federal
13 Election Commission (the "Commission") in the normal course of carrying out its
14 supervisory responsibilities, pursuant to 52 U.S.C. § 30109(a)(2). The Reports Analysis
15 Division ("RAD") referred Workers' Voice ("WV" or "the Committee") to the Office of
16 General Counsel ("OGC") for failing to timely file 24- and 48-hour Reports of
17 Independent Expenditures ("IEs") totaling \$527,990.11 made shortly before the 2012
18 election and \$182,561.70 made shortly before the 2014 election.¹

19 A large portion of these referred IEs were made in connection with door-to-door
20 canvassing (and, to a lesser extent, telephone banking) activities organized by the
21 Committee but carried out by individuals who were employed by and paid by other
22 organizations for the time they spent working for the Committee.² The paid time and
23 associated expenses of employed individuals were provided to, and reported by, WV as
24 in-kind contributions from numerous federal political committees, non-federal political

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1 organizations and labor unions.³ A smaller portion of the referred IEs were made with
2 WV's own disbursements (*i.e.*, they were not in-kind contributions).

3 WV acknowledged that it did not file 24- and 48-hour reports for the in-kind
4 contributions made to further IEs, but argued that 24- and 48-hour disclosure reports are
5 not required for those IEs.⁴ With regard to the remaining missing 24- and 48-hour
6 reports identified in the referrals, WV argued that they constitute a small percentage of its
7 total IE activity during the 2012 and 2014 election cycles, and that the missing reports
8 were attributable to a lack of timely data from vendors and in-kind contributors.⁵ The
9 available information appears to support WV's assertion that \$22,987.50 of the monetary
10 IEs referred in 14L-34 were timely reported.⁶ However, WV's arguments that it was not
11 responsible for late filed reports attributable to its lack of timely data, and that IEs made
12 with in-kind resources did not require 24- and 48-hour disclosure reports are unsupported
13 by the Act, Commission regulations, and precedent.

14 For the reasons set forth below, the Commission found reason to believe that WV
15 and Elizabeth Shuler in her official capacity as treasurer violated 52 U.S.C. § 30104(g)(1)
16 and 11 C.F.R. § 104.4(b) and (c) by failing to timely file IE reports.

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³ 14L-34 Orig. Resp. at 2-3; 16L-18 Resp. at 2-4.

⁴ 14L-34 Orig. Resp. at 5; 16L-18 Resp. at 3-4. WV asserts that it filed 24- and 48-hour reports for \$24,247.50 of the IEs that it made through its own disbursements.

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⁶ As discussed below, the available information does not appear to support WV's assertion that the remaining \$1,260 of allegedly timely monetary IEs (those referred in 16L-18) were timely reported.

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2 **II. FACTUAL BACKGROUND**

3 Worker's Voice is a federal non-connected independent expenditure-only political
4 committee controlled and administered by the AFL-CIO national labor federation.⁷

5 During the 2012 and 2014 election cycles, WV made millions of dollars of IEs. This
6 Report addresses two separate RAD referrals relating to WV's reporting of its IEs in
7 2012 and 2014. The largest portion of the IEs referred (\$427,957.69 in 2012 and
8 \$18,008.50 in 2014) were in-kind contributions made in connection with a door-to-door
9 canvassing project organized by WV, but carried out by individuals whose time was paid
10 for by their own employers.⁸ A smaller portion of the IEs referred (\$100,032.42 in 2012
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12 For those IEs made utilizing the donated labor, WV properly reported the in-kind
13 receipts and disbursements on Schedules A and E, respectively, of its regularly scheduled
14 disclosure reports (e.g., quarterly, pre-general, and post general reports) for the 2012 and
15 2014 election cycles. Similarly, for its own IE disbursements, WV properly reported
16 them on the Schedule E of its regularly scheduled disclosure reports. However, for both
17 its own IE disbursements and in-kind IEs, WV did not file all of the required 24- and 48-
18 hour reports associated with the IEs it reported on Schedule E of its regularly scheduled
19 reports. The missing 24- and 48-hour reports are the subject of the referrals.

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⁷ 14L-34 Orig. Resp. at 2.

⁸ *Id.* at 1.

⁹ *Id.* at 3, 16L-18 Resp. at 5.

A. RR 14L-34

RAD Referral 14L-34 noted the failure of WV to file 24- and 48-hour reports totaling \$527,990.11 for 1,922 IEs as disclosed on its Amended October 2012 Quarterly, 2012 Pre-General, and 2012 Post-General Reports. A summary of those reports covered by the referral is set forth below.¹⁰

Report	Number of Missing 24/48 hour reports	Number of IEs	Amount in Violation
2012 October Quarterly	14	457	\$92,044.23
2012 12 Day Pre-General	94	1,444	\$400,555.82
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Total	118	1,922	\$527,990.11

WV, in its initial response, acknowledged that it failed to file timely 24- and 48-hour reports for (\$427,957.69) of in-kind IEs identified in this referral but offered an explanation for its late filings and requested that the matter be handled by ADRO.¹¹ According to WV, it made a concerted effort to timely file its 48-hour reports during the 2012 general election period until it realized that the untimely receipt of information from the in-kind contributors necessitated the filing of numerous of amended 48-hour reports.¹² At that point, WV appears to have made a conscious decision to not continue to file amended 48-hour reports during the 2012 election cycle once it deemed the

¹⁰ A detailed chart of the untimely filed 24- and 48-hour reports can be found in the referral. All of the missing 24- and 48-hour reports for the referral are in support of or opposition to federal candidates.

¹¹ 14L-34 Orig. Resp. at 1. WV asserted that because of the complexity of its multi-state voter contact program, accurate information sometimes was received too late to file timely 24-hour or 48-hour reports. *Id.*

¹² *Id.* at 4

1 process to be “overwhelming and inefficient” due to its delayed receipt of the necessary
2 information from contributors.¹³

3 WV also asserted that there is no clear legal guidance for reporting IEs made with
4 in-kind contributions.¹⁴ WV noted that Commission regulations require that an in-kind
5 contribution received also “shall be reported as an expenditure” on the appropriate
6 schedule but asserted that the Commission’s public guidance has interpreted this to
7 require that disbursements for in-kind contributions be reported as operating expenditures
8 on Schedule B, not Schedule E, of a committee’s regularly scheduled reports.¹⁵
9 Accordingly, WV maintained that the Commission cannot pursue an enforcement action
10 against WV for not reporting the in-kind contributions used for independent expenditures
11 on Schedule E 24- and 48-hour reports.¹⁶ WV argued that despite the fact that it did not
12 actually rely upon the “Commission’s interpretive rule” by filing its in-kind IE
13 expenditures on Schedule B, the Commission “cannot enforce compliance with a
14 reporting standard that did not then – and still doesn’t – exist.”¹⁷

15 With regard to the \$100,032.42 of referred IEs that were direct disbursements by
16 WV (as opposed to in-kind contributions), WV acknowledged that it untimely reported

¹³ *Id.*

¹⁴ *Id.* at 4-5; *see also* Suppl. Resp. at 2-4. WV asserted that there is no provision of the Act that directly addresses reporting obligations for in-kind contributions used to make IEs and little in the Commission’s regulations and other sources of information about the ways to account for and report in-kind contributions used to make independent expenditures. Suppl. Resp. at 4.

¹⁵ Suppl. Resp. at 6 (citing 11 C.F.R. § 104.13(a)(2)); *see also Campaign Guide for Nonconnected Committees* (“Campaign Guide”) at 58.

¹⁶ Suppl. Resp. at 4.

¹⁷ 14L-34 Orig. Resp. at 5.

1 \$77,044.92, but attributed the late filing to various types of vendor error.¹⁸ WV
2 maintained, however, that it timely reported the remaining amount (\$22,987.50) which
3 related to door hangers and telephone calls made by two of its vendors, Mission Control
4 and NGP VAN.¹⁹ WV stated that a typographical error mistakenly listed the date of the
5 Mission Control disbursement as October 11, 2012, rather than October 15, 2012, which
6 made the report appear late.²⁰ WV stated that a similar error listed the NGP VAN calls as
7 occurring on October 3, 2012, rather than October 11, 2012.²¹

8 **B. RR 16L-18**

9 The 16L-18 Referral noted the failure of WV to timely file 24- and 48-hour
10 reports totaling \$182,561.70 for 192 IEs as disclosed on its Amended 2014 30 Day Post-
11 General and 2014 October Quarterly Reports. A summary of those reports covered by
12 the referral is set forth below.²²

Report	Number of missing 24- and 48 hour reports	Number of IEs	Amount in Violation
2014 October Quarterly	4	159	\$27,106.62
2014 30 Day Post- General	19	33	\$155,455.08
Totals	23	192	\$182,561.70

13
14 With regard to \$18,008.50 of in-kind IEs identified in this referral, WV made the
15 same arguments that it did in 14L-34, namely that it was not required to file 24- and 48-

¹⁸ *Id.* at 7-9.

¹⁹ *Id.* at 7-8.

²⁰ *Id.* at 7.

²¹ *Id.* at 8.

²² A detailed chart of the untimely filed 24- and 48-hour reports can be found in the RR 16L-18. All of the missing 24- and 48-hour reports for the referral are in support of or opposition to federal candidates.

1 hour reports for in-kind expenditures because Commission guidance suggested reporting
2 the in-kind disbursements as operating expenditures on Schedule B rather than
3 independent expenditures.²³

4 With regard to the \$164,533.20 of referred IEs that were direct disbursements,
5 WV acknowledged that \$163,273.20 of IEs made through its own disbursement were
6 reported late.²⁴ But, WV asserted that \$1,260 of IEs relating to a vendor named Mosaic
7 were timely reported.²⁵ According to WV, of the \$1,260 in payments to Mosaic, one
8 \$270 payment inadvertently listed the dissemination date of October 19, 2014, rather than
9 October 16, 2014, for fliers in support of Joe Garcia.²⁶ Since the \$270 payment was
10 reported on October 17, 2014, WV asserted that it was timely reported.²⁷ As to the
11 remaining \$990 of the \$1,260 in Mosaic payments, WV contended that due to a vendor
12 system flaw, the Schedule E dates for "Date of Public Distribution/Dissemination" and
13 "Date of Disbursement or Obligation" were reversed, resulting in an entry that appeared
14 to be late but was not late.²⁸

15 III. ANALYSIS

16 The Act requires committee treasurers to file reports of receipts and
17 disbursements in accordance with the provisions of 52 U.S.C § 30104(b).²⁹ This

²³ See 16L-18 Resp. at 1.

²⁴ *Id.* at 5.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ 52 U.S.C. § 30104(a)(1).

1 requirement includes reporting contributions received and independent expenditures
2 made by political committees other than authorized committees.³⁰ Further, political
3 committees that make or contract to make independent expenditures at any time during a
4 calendar year – up to and including the 20th day before an election – must disclose the
5 activity within 48 hours each time that the expenditure aggregates \$10,000 or more.³¹
6 Political committees that make independent expenditures aggregating \$1,000 or more
7 with respect to a given election after the 20th day, but more than 24 hours, before the date
8 of that election, must disclose them within 24 hours following the date of
9 dissemination.³² In addition, political committees must file additional reports within 24
10 hours after each time they make or contract to make independent expenditures
11 aggregating an additional \$1,000.³³

12 Thus, WV had more than one reporting obligation with respect to disbursements
13 (including those corresponding to in-kind contributions used) to make independent
14 expenditures: regularly scheduled reporting and timely 24- and 48-hour IE reporting.
15 WV appears to have fulfilled the first of these obligations, including when it reported the
16 receipt of relevant in-kind contributions used in making IEs on Schedule A and
17 corresponding disbursements on Schedule E of its 2012 and 2014 regularly scheduled

³⁰ 52 U.S.C. §§ 30104(b)(2)(A), (4)(H)(iii); 11 C.F.R. §§ 104.3(a)(2)(i), (b)(1)(vii), 104.4(a).

³¹ 52 U.S.C. § 30104(g); 11 C.F.R. § 104.4(b).

³² 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

³³ 11 C.F.R. § 104.4(c).

1 reports.³⁴ WV did not, however, meet its second reporting obligation: timely 24- and 48-
2 hour IE reporting.

3 Although WV contended that it failed to file the necessary 24- and 48-hour
4 reports because vendors and in-kind contributors failed to provide timely data,³⁵ The
5 Commission has not considered vendor error to be a valid exculpatory or mitigating
6 factor in similar situations.³⁶

7 Furthermore, WV's argument that the Commission's reporting guidance excuses
8 it from filing 24- and 48-hour reports is unpersuasive. The Campaign Guide guidance
9 cited by WV, which states that offsetting disbursements for in-kind contributions must be
10 reported as operating expenditures on Schedule B, addresses only a committee's regularly
11 scheduled reporting obligations for certain in-kind contributions, not its 24- and 48-hour
12 IE reporting obligations.³⁷ Assuming, *arguendo*, that WV is correct that the Commission
13 has instructed committees to report all offsetting disbursements for in-kind receipts used
14 in making IEs on Schedule B instead of Schedule E on their regularly scheduled reports,
15 WV fails to explain why such regularly scheduled reporting guidance should or does
16 excuse WV from its separate 24- and 48-hour reporting obligations. As discussed above,
17 the statute and regulations impose two reporting obligations on committees making IEs:

³⁴ See 11 C.F.R. § 104.13 (providing that in-kind contributions received also shall be reported as expenditures on the appropriate schedule).

³⁵ See, e.g., 14L-34 Responses; 16L-18 Resp. at 3.

³⁶ See, e.g., MUR 6568 (Heath Shuler for Congress) (finding that Committee failed to report disbursements caused by vendor's error) and MUR 6300 (Republican Party of Virginia) (finding RPV responsible for its vendor's failure to timely forward contributions and RPV's consequential reporting errors). The Commission has, however, taken vendor error into account as a mitigating factor in other types of cases, such as cases involving disclaimer violations. See, e.g., MUR 6125 (McClintock for Congress) (robocall disclaimer violation dismissed due to possible vendor error, among other factors).

³⁷ See Campaign Guide at 58.

1 on 24- and 48-reports and, later, on regularly scheduled reports. On the issue of 24- and
2 48-hour reports, the Campaign Guide, the Act, and Commission regulations are clear:
3 committees making IEs over the specified aggregated amounts must file the appropriate
4 24- and 48-hour reports.³⁸

5 Moreover, even for purposes of regularly scheduled reporting, the Campaign
6 Guide's guidance that ordinary (*i.e.*, non-IE) offsetting disbursements corresponding to
7 in-kind contributions be reported as operating expenditures does not change the regularly
8 scheduled reporting obligations for in-kind contributions used to make IEs, which the
9 Campaign Guide does not address.³⁹ Indeed, the campaign guide states that it provides
10 guidance on "certain aspects" of the law and is "not intended to replace the law or to
11 change its meaning."⁴⁰ For the "certain aspect" of the law not addressed in the Campaign
12 Guide, *i.e.*, the reporting of in-kind resources used to make IEs, WV's regularly
13 scheduled reports do not evidence its alleged confusion; on its regularly scheduled
14 reports, WV reported the offsetting disbursements for the in-kind receipts of labor used to
15 make the referred IEs on Schedule E, not Schedule B.⁴¹

³⁸ See Campaign Guide at 72-73; *see also* 52 U.S.C. §§ 30104(g), (g)(1); 11 C.F.R. §§ 104.4(b), (c). There is nothing in the Act, regulations, or campaign guides that would suggest that reporting a certain category of activity on one disclosure form automatically excuses reporting it on another disclosure form. To the contrary, the Campaign Guide states that IEs itemized on Schedule E that are disseminated prior to payment must also be disclosed on Schedule D as a reportable debt. *See* Campaign Guide at 72. It further provides that IEs that exceed an aggregated amount of \$10,000 must be reported on Schedule E and reported on a 48-hour Report. *Id.*

³⁹ See Campaign Guide at 72 (describing Schedule E reporting of IEs, without mentioning the use of in-kind resources).

⁴⁰ *Id.* at i.

⁴¹ See 14L-34 Orig. Resp. at 5 (acknowledging that WV did not report any of the referred in-kind disbursement offsets on Schedule B of its reports, but rather reported them on Schedule E of its regularly scheduled reports).

1 Lastly, we address WV's arguments on the timeliness of its reporting for IEs
2 made through its own disbursements as it pertains to the following vendors: Mission
3 Control (2012 activity); NGP Van (2012 activity); and Mosaic (2014 activity).⁴² We
4 have considered WV's assertions regarding the 2012 Mission Control and 2012 NPG Van
5 IEs and reviewed the relevant disclosure reports. The disclosure reports confirm WV's
6 assertion about the typographical errors. We are satisfied that these were clerical errors
7 and that the Mission Control and NPG Van IEs were timely filed. As for the \$1,260 of
8 the Mosaic invoices that WV asserted were timely reported, we have reviewed the
9 Committee's filings and have not been able to locate the specific \$270 Mosaic IE filing
10 that WV claimed was filed on October 17, 2014. In addition, we are unable to locate the
11 Mosaic IEs totaling \$990 which WV claimed were timely reported due to insufficient
12 information provided by WV in its response.⁴³ Therefore, we conclude that the \$1,260 in
13 Mosaic IEs were not timely filed.

14 Thus, WV did not comply with the Act's reporting requirements when it failed to
15 file 141 24- and 48-hour reports totaling \$687,564.31 of IEs.⁴⁴ The Commission
16 therefore found reason to believe that WV and its treasurer violated 52 U.S.C.
17 § 30104(g)(1) and 11 C.F.R. § 104.4(b) and (c).

⁴² 14L-34 Orig. Resp. at 7-9; 16L-18 Resp. at 5. As to the remaining 2012 and 2014 monetary IEs, WV acknowledged the untimely reporting but provided various explanations for the failure to timely file the IE reports, none of which are sufficient under the Act or Commission regulations to vitiate the reporting violations. See 14L-34 Orig. Resp. at 7-9; 16L-18 Resp. at 5-6. The Commission therefore concluded that WV has failed to meet its reporting obligations with respect to these IEs and is in violation of the Act and Commission regulations.

⁴³ See 2014 Post-General Report.

⁴⁴ This figure reflects the subtraction of \$22,987.50 from the 14L-34 amount in violation, based on our conclusion that the Mission Control (\$15,487.50) and NGP VAN (\$7,500) IEs were timely filed.